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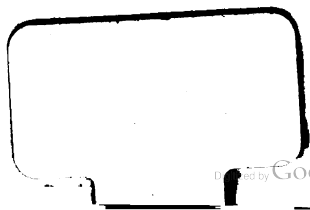
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FRANCISCO FERRER

CRIMINAL CONSPIRATOR

A REPLY TO THE ARTICLES BY WILLIAM
ARCHER IN McCLURE'S MAGAZINE,
NOVEMBER AND DECEMBER, 1910

BY

JOHN A. RYAN, D.D.

AUTHOR OF "A LIVING WAGE," "THE CHURCH AND
INTEREST TAKING," ETC.

ST. LOUIS, MO., 1911

PUBLISHED BY B. HERDER

17 SOUTH BROADWAY

FREIBURG (BADEN)
GERMANY

LONDON, W. C.
68, GREAT RUSSELL STR.

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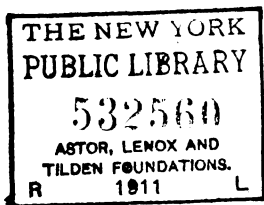
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FRANCISCO FERRER

CHAPTER I

INTRODUCTORY

CATHOLIC INTEREST AND ATTITUDE.

What is there about the Ferrer case to give it special interest for Catholics? Even though Ferrer's execution were utterly unjustified, it was the work of the Spanish government, not of the Catholic Church. Why, then, should Catholics anywhere, least of all, American Catholics, feel called upon, as the October, 1910, number of McClure's bears witness, to defend that execution? A partial answer is suggested by the eighth sentence of Mr. Archer's article in the November issue of that magazine: "The execution was denounced as a judicial crime of the blackest type, and Ferrer was glorified as a martyr of free thought, done to death by a sinister and vindictive

clericalism." As a consequence, it would seem, "Roman Catholics of all countries came forward to the rescue and vindication of their Spanish brethren" (43, 2).¹ But this statement gives us only the immediate and provoking reason of the Catholic interest and activity. It does not tell us why, not content with exculpating the Church, Catholics should have gone further and tried to vindicate the government of Spain. Although the Catholic upholders of the execution were convinced, partly by their interpretation of the facts, and partly from their confidence in the Spanish sense of justice, that Ferrer deserved to die, their opinion on this point did not necessarily call for vigorous and animated public expression.

The explanation is to be found in several facts and motives. Undoubtedly many of the Catholic defenders of the execution were actuated by a strong sympathy with Spain, feeling with the majority of the inhabitants of that country, that "Church and State in Spain are identical and indissoluble." In the

¹ Unless otherwise noted, all numerical references of this kind relate to the pages and columns of Vol. 36 of McClure's Magazine. That is, November or December, 1910.

view of these writers, defense of the one involved and supplemented defense of the other. Other Catholics, who cared nothing for Spain, realized that the ignorant and the prejudiced would hold the Church responsible anyhow; hence they concluded that to vindicate the execution would be the easiest and most effective defense of the Church. And perhaps a majority of all these who "came forward to the rescue and vindication of their Spanish brethren," were influenced to a greater or less degree by the thought that a good Catholic ought to uphold every just punishment meted out to a propagator of pernicious views on morality, religion, and social order; that one ought not to remain silent when the cause of such a man is implicitly made the cause of anarchism, irreligion, and immorality; and that in these circumstances, and because of the higher social interest, the man himself deserved not sympathy and commiseration, but obloquy and the most rigorous application of the law.

After the lapse of more than a year, we realize that the Ferrer controversy included a great deal of exaggeration, and not a little passion. Mr. Archer has called attention to

some overstatements and misstatements by the champions of Spain. Without attempting any apology, I would point out that, like similar offenses on the other side, these are in large measure explained by lack of adequate and accurate information. Much of the passion displayed by some Catholic writers arose from resentment against something that the average non-Catholic does not suspect, namely, the fact that the first accounts of the Ferrer trial furnished to the newspapers, whether by local correspondents in Spain, or by the general news agencies of Europe, were misleading, and were deliberately intended to mislead. While Mr. Archer's articles in McClure's are unfavorable to Spain and to the Spanish Catholics, I venture to say that had his description (as distinguished from his comments and inferences) of Ferrer's life, teaching, and trial been given to the newspapers in the beginning, the "storm of protest" would have been confined to Anarchists, Socialists, and other kinds of extremists. Men of moderate views, whether conservatives or progressives, would not have deemed Ferrer or his cause worthy of a second thought. Such persons were deceived by the false, biased,

and misleading story that was given out on the day of the execution, and that has, with slight modifications, become the basis of a permanent Ferrer tradition in the minds of the majority of non-Catholics. No doubt the latter would hesitate to believe that press and public were deliberately deceived in this fashion, but it is impossible to take up the point in these pages. I must content myself with the statement that well-informed Catholics have long been convinced that there exists throughout the Continent of Europe an organized and effective conspiracy for the purpose of providing poisoned and hostile "news" on all topics seriously affecting the Catholic Church.

Three of the points discussed by Mr. Archer seem to demand further consideration, on account of their intrinsic importance, and because of their interest for Catholics and non-Catholics alike. These points are: the fact that the rioting was directed against Catholic institutions; the trial and condemnation of Ferrer; and his place in history as an exponent of ideas and theories.

CHAPTER II

WHY THE MOB ATTACKED CATHOLIC INSTITUTIONS

There is really no mystery about the matter," says Mr. Archer; for "the religious houses were chronically and intensely unpopular" (54, 1). Among the causes alleged for this unpopularity are: the alliance of the clergy and the religious congregations with "capitalism, militarism, and all the enemies of social justice" (50, 1); the monastic ideal, "rejected with loathing by the Catalan workman," yet "ensconced behind high-piled bastions of privilege" (*ibidem*); the suspicion that naturally arises when a community "walls itself in from the world, and admits no intervention of the law, no public inspection of its practices" (55, 2); and the "unfair competition" of some of the religious houses "in the production of certain commodities" (50, 1). Are these charges true? and, true or not, do they contain a solution of the question?

AN EXPLANATION THAT DOES NOT EXPLAIN.

With regard to the assertion that the clergy and the religious were in league with capitalism and militarism, it is obvious that a community of workingmen who were anarchists would in all probability denounce and hate all public persons who refused to condemn private capital as such, and the army as such, regardless of the use that was made of these institutions. The anarchist believes in neither of them, but he cannot reasonably expect everyone else to agree with him. If the Spanish clergy went beyond a defense of these things as *institutions*, and championed the *oppressive deeds* of capitalism or militarism, they very naturally provoked resentment. The only approach to a specific charge that they did offend in either of these ways, is contained in the statement that "a most unwise attempt had been made in some quarters to represent the war in the light of a crusade against the infidel—a piece of hypocrisy that deceived no one and irritated many" (54, 1). Hypocrisy is too mild a term; sacrilege would be more nearly appropriate. Under its most favorable aspect, the Melilla expedition was of very

doubtful wisdom and propriety; under some of the constructions of which it is capable, it was a very sordid business, indeed. In the October, 1910, number of McClure's magazine (706, 1) Mr. Shipman mentions the possibility or the probability that the mining operations which provoked the attack of the Moor tribesmen, and thus led to the calling out of the Catalan reservists, took place upon the territory of the Moors. Such things have happened before in the history of modern industrialism. At any rate, the government seems to have made no attempt to placate the tribesmen, either by offering to pay them for trespass, or by showing them that their territory had not been invaded. All too frequently have modern imperialism and national expansion been motived by the cupidity of a few powerful captains of industry, politicians, and office holders, rather than by a disinterested desire to uplift the natives of the exploited country, or to benefit the masses of the people at home. And a more phlegmatic and more enlightened people than the Catalans would probably have resented the Melilla war as a purely capitalistic expedition. Until someone brings forward the evidence of facts, I shall

refuse to believe that any considerable number of the Spanish clergy spoke of this expedition as "a crusade of the Christian against the infidel," or condoned any of its suspicious aspects, or defended the unfair features of the Spanish law of conscription, such as the exemption of the wealthy from military service.

Turning our attention now to the "loathed monastic ideal, ensconced behind high-piled bastions of privilege," and the immunity of the religious from "public inspection of their practices," we find nothing in Mr. Archer's articles which tends to show that in these respects the monks and nuns of Spain differ from their brethren in other countries. Everywhere the great mass of the Catholic people "reject the monastic ideal," in the sense that they do not want to adopt it themselves; but they do not therefore deny its direct value for those who do adopt it, nor its indirect value for the community. Nor does it appear that convents in Spain are more secure from legal inspection than those of England and the United States. "To the Anglo-Saxon mind," says Mr. Archer, "it would seem that a community" living thus secretly, "should not complain if suspicions arise as to the nature of

its practices" (55, 2). Nevertheless the great majority of the inhabitants of English speaking countries do not seriously propose legal inspection of convents in these countries. It gives one pleasure to think that in this case Mr. Archer is not a competent or fair interpreter of the "Anglo-Saxon mind." After all, there are very few religious communities so utterly secluded that their life and practices are unknown to the general public. In any case, one might ask why the law should inspect a convent any more than a secret society or a private family. In all three instances abuses of which the law ought to take cognizance are possible; but so long as no definite and probable charge of wrong-doing is preferred, the law wisely and reasonably presumes that no abuse exists. It does not act on the assumption that abuses are normal, and that regular inspection is therefore normal. It refuses to accept as its standard of attitude the rash suspicions of a small minority which proceed from ignorance, impertinence, or prurience. In a word, then, the circumstances discussed in this paragraph do not help us to understand the unpopularity of the Spanish religious communities.

The charge of unfair competition in the production of commodities, is more plausible. Only, Mr. Archer does not support it by specific and definite evidence. Mr. Shipman, who is probably as well acquainted with the situation as any other American, declares that none of the congregations thus occupied lives in Barcelona (McClure's, October, 1910; 707, 2). At any rate, the fact in question is not peculiar to Spain. Mr. Megargee cited a typical instance of it in the United States, when he pointed out that the House of the Good Shepherd in Philadelphia supports its reformatory work by conducting a large laundry (idem, 699, 2). And it is exempt from taxation, in accordance with the general practice of our commonwealths with regard to religious, educational, charitable, and reformatory institutions. Americans recognize that, directly or indirectly, the works of these establishments are worth more to the public than the remitted taxes. But Mr. Percival Gibbon rejects the parallel drawn between the Philadelphia community and the industrial orders of Spain. The former, he declares, "is self-supporting by its own industry," while the latter "compete with private enterprise by means of cap-

ital provided by the pious" (idem, 703, 2). Nevertheless, the two cases are essentially alike. As it is quite unlikely that the Spanish congregations use up their *capital* to meet their daily living expenses, they must be "self-supporting by their own industry," that is, through the sale of their products. If they live off their capital they are very poor "captains of industry," and their competition with lay enterprises cannot be very formidable. On the other hand the Philadelphia community (and practically all the other "working congregations" in America) must have ultimately received the bulk of its capital from "the pious." I know of no other source from which the capital could have come. Apparently, then, the "unfair competition" of the Spanish orders does not differ in kind from that carried on by similar communities in the United States; yet the latter have provoked no popular resentment.

To be sure, the industrial activity of the Spanish communities may differ very much in *degree* from anything of the sort that exists in America. It may be so extensive as to monopolize entire branches of trade, or to demoralize wages and prices throughout one or

more trades. In the former case it might be entirely fair; in the latter it would be certainly unfair. If, owing to its ability to do the work cheaper, and to sell its product cheaper, a religious community gets control of an entire trade, say, laundering, it ought to be regarded as a public benefactor. While it would displace secular capital and labor, it would not differ in this respect from a new machine, or a new process of production. To reject it on this account would be quite as unreasonable and uneconomical as to reject the new machine or the new process. The displacement ought, of course, to be gradual, and the excluded workers provided for in some other part of the industrial field. The members of the congregation are, indeed, supplanting lay persons, but entrance into a religious community does not deprive men and women of the moral right to live by their labor. If the industrial congregation controls only a part of the trade in which it operates, it will still give no just cause of complaint so long as it does not depress the price of the product below the level that is required in order to maintain fair wages, profits, and interest in the secular establishments. On the other hand,

if it is unable to supply the entire demand for the kind of goods or services that it provides, and yet reduces prices or charges below the standard just described, it undoubtedly wrongs not only its competitors but all labor in the region in which it operates. Such a congregation becomes a menace to decent standards of living in precisely the same way as the Chinese cheap laborers on the Pacific coast. Finally, if in any of these cases the congregation did not return to the public in some form of free social service, charitable, or educational, or other, more than the equivalent of its tax exemption it would be in the position of an unfair competitor.

How far these suppositions, or any of them, are verified in the case of the Spanish congregations, I am unable to say. Neither Mr. Archer nor any other writer in English presents specific or adequate information on this point. Indeed, the average writer on Spanish conditions seems to think that his readers care for nothing beyond sensational general assertions. As a typical example of this method, I would cite an article in the "Independent," November 3, 1910, by Kellogg Durland. Here are a few samples of the "information" that

he gives us: "The great millstone around the neck of the nation has long been the Catholic Church," which continually directs its "efforts against progress," exerts "a stultifying influence upon education," constitutes "an enormous drain upon the national revenue," and enjoys "an uneconomic and ridiculous exemption from taxation." These generalizations may or may not be correct, but the writer gives us no facts upon which to decide the question. Of the few specific statements that he does make, some are plainly incorrect, as the assertion that "Spain has 70,000 clericals who are parasites upon the nation." By "clericals," Mr. Kellogg presumably means diocesan clergy and monks, but the total number of these in Spain is slightly less than 45,500, and probably some of them do some useful work. If, however, he intended to include nuns also he is even further astray, since the aggregate of all three classes is a little above 98,000 (See "America," July 23, 1910, p. 281, for authoritative and detailed statistics). Perhaps he means that twenty-eight thousand of the ninety-eight thousand are useful citizens, and that 70,000 are, therefore, "parasites"; but we should like to know the basis of his con-

clusion. A most welcome exception to the usual method of discussing the clerical question in Spain, is found in the "Quarterly Review" for October, 1910. According to the "Quarterly" writer, who is not a Catholic: "Clericalism, in certain of its aspects, is therefore a real grievance, calling for immediate and efficacious remedies;" but the present crisis in Spain is "largely of an economic character, intensified by national, political, and dynastic elements. To simplify these complex issues by reducing them to one, and to label that one clericalism, is to misstate the problem. If Señor Canelejas were to break with the Vatican to-morrow, to disendow all religious communities, to confiscate all their property, and even to divorce the Church from the State, he would be able to announce the death of clericalism in Spain. But the palsy which has stricken his high spirited and richly endowed countrymen would continue unabated. Only one of the Hydra's heads would have been severed from the body, and that one the smallest of them all" (Page 586). While the writer of these lines does not support them by a mass of statistics or other concrete statements, his paper

is sufficiently specific to raise the quoted sentences above the level of empty generalizations; it agrees with facts already ascertained, and it is very convincing on intrinsic grounds.

Returning, then, to Mr. Archer's explanation, I maintain that it is wholly unconvincing: first, because many of the conditions, practices, and enterprises of the Barcelona congregations are common to monastic and conventual establishments everywhere; second, because his really serious charges, though possibly true, are not proved; and, third, because in so far as they can, morally speaking, be true, they do not begin to justify the diabolical hatred cherished against the clergy and convents by the masses in Barcelona.

A PROVISIONAL EXPLANATION.

"But," say some Catholic writers, (e. g., Mr. Shipman, in the "Catholic World," December, 1910, p. 380) "the rioting was done by only eight or ten thousand persons, who are a very small part of six hundred thousand." Very true; and it is possible that an equally large number of persons would be ready to do equally diabolical deeds in an American city of the same size as Barcelona. The important

difference is that in the former, say, Boston, Baltimore, or Cleveland, the mass of the population would not have stood idly by and permitted the outrages that were perpetrated in the Spanish city. What has to be explained, therefore, is not merely the overt acts of a small minority, but the criminal indifference of the overwhelming majority, who are all Catholics. If it be objected that a very large proportion of this majority is Catholic only in name, that, as Mr. Archer asserts, the working classes of Barcelona are almost all anarchists, the difficulty is merely pushed a little further back, and the question then takes this form: "How did such a situation come about in a country like Spain, where all the institutions of religion are completely organized, where the Catholic religion is unopposed by any other religion, and where it has the support of the State?" This is the fundamental question. In a private letter to Mr. George Fottrell of Dublin, written December 10, 1873, and published in the "Catholic Times" of Liverpool in either July or August, 1906, Cardinal Newman suggested a partial answer: "As far as I can see, there are ecclesiastics all over Europe whose policy it is to

keep the laity at arm's-length, and hence the laity have become disgusted and become infidel, and only two parties exist, both ultras in opposite directions." History does, indeed, remind us that any class of men enjoying a superior social position, whether founded upon religion, birth, politics, or education, is too often tempted to ignore that large element of democracy which underlies the moral law of nature, as well as the Christian teaching on the intrinsic worth of personality, on the equality of all human beings as persons, and on the universality of human brotherhood. When this fundamental element is ignored or outraged in any of its aspects by any of the superior classes, for any considerable length of time, reaction becomes sooner or later inevitable. Sometimes it breaks forth in a revolution, bungling, crude, and cruel; more often it takes the scarcely less disastrous form of passive, obstinate, and sullen discontent and opposition. But these conditions and results require a long period of time to mature, and Newman does not explicitly (though it may have been in his mind) deal with the historical aspect of the situation in this letter. Nor does his state-

ment cover all the facts of the present. Here is another explanation which suggests both of these neglected factors. It comes from "a Portuguese prelate of high rank." Speaking of the popular indifference and hostility to religion in his country, he said: "The farmers and villagers are very ignorant, without doubt, but they are laborious, and if the clergy had done their whole duty, they would be united to their parish priests and wholly devoted to the Church. . . . In spirituals it is not so long ago that most of the clergy busied themselves in everything except the ministry. . . . In fact, the government, like the old French monarchy, had brought the clergy under the yoke. . . . The slavery was complete. To give a sermon or to sing a hymn before the Blessed Sacrament, a permit from the civil authorities was necessary, for which a fee was charged; without the consent of the same civil power, no one could be ordained to the priesthood. It is only too plain that in these conditions the formation of an influential body of men was impossible; and they have ended by being found wanting" ("America," Oct. 29, 1910, p. 62).

Combining the essential points of this statement, namely, clerical neglect of duty, and clerical incompetence resulting from improper interference by the government, with the point noted by Cardinal Newman, clerical aloofness from the masses,—we get a theory that seems to be fairly adequate, and sufficiently in harmony with the general situation to supply the missing factor which is needed to explain the anti-clericalism that prevails in some of the countries of the continent. Whether it fits the case of Spain, I do not know, but it is at least antecedently plausible, if not probable. Now the most significant and persuasive feature of this theory is that it does not place all the blame upon the clergy of the present generation. It is, therefore, immeasurably more probable and reasonable than Mr. Archer's and similar theories, which always lead at length to this dilemma; Either the priests and bishops of to-day are lacking in virtue and efficiency to a degree that is improbable and unproved; or, large masses of people in more than one European country have become religiously indifferent and hostile to a degree that implies total and irredeemable depravity. The theory advanced above

faces no such difficulty, for it distributes the blame, both as to clergy and laity, over many generations, and more than one century. Who will say that the French anti-clericalism of to-day, is due exclusively or in any considerable degree to the present generation of priests and bishops in that country? On the other hand, who that is acquainted with history will deny that, had the clergy of France, higher and lower, monastic and diocesan, "done their whole duty" (to quote the words of the Portuguese prelate) and lived up to the full measure of their opportunities, religious, educational, political, and social, during the four centuries immediately preceding 1789,—the Revolution and the religious disasters that ensued could and would have been prevented? As the Portuguese prelate intimates, the contemporary clerical negligence and incompetence that afflict his country, are due in large measure to unjust governmental interference; but it is in order to ask what the clergy, higher and lower, were doing in that earlier time when conditions were forming which enabled and emboldened the government to demand, obtain, and retain that unreasonable power of interference? Indeed, it is not necessary to

multiply isolated and national examples in the presence of the more general fact that, while the Catholic clergy of to-day are not responsible for the continued existence of Protestantism, their forerunners in the thirteenth, fourteenth, and fifteenth centuries could have prevented the Reformation if they had "done their full duty."

History, then, not contemporary conditions alone, seems to furnish a key to the problem. However, the historical explanation must not be interpreted as attributing all the guilt to the clergy. There were other causes, political, social, and doctrinal, and other social classes and personages, that were morally responsible and culpable. And each of these causes was undoubtedly required in order to produce the total bad effect. While the clerical factor was largely negative, in the sense that it was chiefly a sin of omission, it preceded the others logically if not in time, and without its contribution the other factors would not have been adequate.

CHAPTER III

THE TRIAL AND SENTENCE

As Mr. Archer sees the matter, Ferrer 'was unfairly treated in several ways: outside of the trial; in the kind of court, the form of procedure, and the manipulation of the procedure by the trial authorities; and in the death sentence based upon insufficient evidence.

UNFAIR TREATMENT OUTSIDE OF THE TRIAL.

Under this head I include the following statements of Mr. Archer: Ferrer was put into a vile cell, and compelled to don a degrading suit of clothes (230, 2); the trial was conducted with undue haste, and the execution followed too closely upon it (231; 240); incriminating documents were illegally permitted to get into the press before they were used at the trial (232, 1); and the men who arrested Ferrer were rewarded by the government before the trial was finished (232, 1). Apparently the first of these charges rests

upon the word of the prisoner alone, which may be as unreliable here as in his account of his journey from Masnou to Premia (239, 1). As to the second, haste is a relative term: about forty-five days elapsed between Ferrer's arrest and his execution. Third, if the Spanish authorities were responsible for the publication of the incriminating documents they deserve censure, of course; but the clever gentlemen of the press frequently obtain news in ways that involve official unfaithfulness. This explanation and this motive are at least as probable as the hypothesis of deliberate injustice. The fourth charge seems to be absolutely without merit, since governments do not usually wait, and there is no good reason why they should wait, for the final disposition of a case before paying the rewards that they have offered for the prisoner's *arrest*. Even if we accept all these complaints at their face value, they do not indicate a deliberate and effective prejudgment of the case.

THE MILITARY COURT.

We have now to consider a more serious objection. Ferrer was tried by a military court, although his alleged offense had been

committed, in part at least, against the army. This sounds rather bad; but in judging a law, procedure, or institution, we ought to employ the standards that are in vogue among civilized nations, instead of some abstract ideal of comparison that seems good to our own minds. In the course of this pamphlet I shall be obliged more than once to call attention to this obvious principle; for Mr. Archer constantly condemns the Spanish authorities for shortcomings that are such only when judged by standards that no other nation has yet attempted to reach or apply. Rebellion, sedition, and violent attacks upon the army, are tried before military courts in all, or almost all, the countries of Europe. In the United States, civilians are brought before an army court whenever the place in which the offense has been committed is under martial law. Consequently, the spectacle of "one of the parties sitting on the bench to try the other party," to use Mr. Archer's misleading emphasis, is by no means unique, even though it may seem "remarkable" (229, 1). Moreover, the assumption that the average military court will not possess as high a sense of honor and conscientiousness in dealing with offenses

against the nation and the army, as the average civil judge would in the same case, is not entirely self-evident. In passing, it is perhaps worth while to note that the law which requires charges such as that against Ferrer to be tried by a military tribunal, was enacted by the liberal party in Spain. This fact suggests one or perhaps both of two inferences: Conditions were so desperate that the law was imperative in the interest of national safety; or, the Spanish liberals, like their brethren throughout the Continent generally, believe very firmly in the liberty to think, speak, write, and do those things that seem good to themselves, but are not so keen for liberty with regard to the things they do not like.

THE PROCEDURE AND THE WAY IN WHICH IT WAS OBSERVED.

Concerning the first of these points, Mr. Archer uses strong language, calling the rules of procedure, "the machine in which Ferrer was caught" (230, 2). Yet the Spanish procedure does not differ materially from that followed by military courts in the United States.¹ According to Mr. Archer, the Span-

¹ My main authority for the references that I

ish law requiring "domiciliary searches to be conducted in the presence of those interested, or a member of the family, or of one or two witnesses," was not observed by the police who ransacked Ferrer's house for incriminating papers (58, 2; 229, 2; 239, 2). Nevertheless, for any proof that he gives to the contrary, Madame Villafranca's mother might have watched the officers during all that portion of their sixty hours' stay which was actually occupied in the search. The investigation may, indeed, have been continuous, different groups alternately sleeping and searching; but we do not know that this was the case, nor is there any proof that two other witnesses were not present. Even if Mr. Archer's inference be correct, it represents exactly what happens in similar circumstances in America; for the military law of the United States provides no such safeguard as that which he accuses the Spanish officers of violating.

Mr. Archer "cannot discover that any public make to American military courts is an officer in the Engineer Corps of the United States Army, who has had experience as Judge Advocate at military trials, and who kindly went over Mr. Archer's account of the Ferrer trial very carefully, comparing it at every step with our own procedure. Cf. Dudley, "Military Law and Proceedings."

session was ever held before the final Vista Publica" (229, 2). Notwithstanding this negative circumstance, the sessions of the Plenario could have been, and in all probability were public. Since he submits no direct evidence, either from persons who were officially present at the Plenario, or from unofficial persons who sought admission and were refused, we must conclude that the inference which he suggests in the words just quoted, is based entirely upon the silence of the published account, or "Process." Now, there are two reasons why this official account should say nothing on this point. In the first place — and this is a fact that we cannot keep too clearly before our minds — this published account is not, and does not purport to be a *complete record* of all the stages of the examination and trial. It is not the *official record* of the trial in the strict sense of that phrase. It is rather the official defense of the government's execution of Ferrer, and contains only those parts of the proceedings which the authorities regarded as likely to affect favorably public opinion. Hence it does not contain the full contents of the *dossier*, or official report of the examining

commandant. In this report Mr. Archer would have found a written statement of the testimony taken, and of the other proceedings at the Sumario and the Plenario. Now, Mr. Archer did not examine this record, the *dossier* (232, 2), and there was no reason why any of the three court officers whose addresses compose the published account, or "Process" (230, 1 and 2), should mention the fact that the law of publicity had been complied with in the Plenario. In passing, I would suggest that Mr. Archer should have tried to see the *dossier*, and thus be in a position to have direct knowledge of the proceedings of the Sumario and the Plenario, instead of depending upon inferences drawn from the Fiscal's¹ references to these stages of the trial. If he had made the attempt and failed, he ought to have told us so. But, and this is the second reason why his inference drawn from the silence of the published account is inconclusive, even if he had seen the *dossier* he would probably have found nothing concerning the publicity of the Plenario; for the official records of trials which are normally open to the public do not usually contain the direct

¹ Prosecutor.

and superfluous information that the law in this matter had been observed in this particular case. There is no more reason why they should do so than that they should inform us of the fact that the male portion of the audience sat in the court room with their heads uncovered. As a matter of fact, the official record of the other trial to which Mr. Archer refers, relates the fact about publicity only indirectly, in the statement that certain testimony caused "great laughter among the public" (229, 2). Moreover, the military courts of the United States may close their doors at will, though they, as a rule, hold open sessions; but the records never contain any reference to an audience, except when something unusual occurs, as a disturbance requiring the court room to be cleared.

Ferrer had "no defender or adviser of any sort" during the Sumario (230, 1) but he would have had none during the corresponding stage in a *civil court* of France previous to 1897 (Cf. Bodington, "The French Law of Evidence," p. 108). The same thing would have happened during the preliminary investigation which corresponds in a general way to the Sumario, had he been tried by a civil

court in Germany, or by a military court in America. Even at the trial proper in our country, assistance of counsel is a privilege, which by valid orders of the President is never denied; but it is not a right provided by military law.

The procedure of the Plenario authorizes a "ratification," or re-examination of the witnesses; "but there seems to have been nothing of the sort in Ferrer's case" (230, 1). This is evidently another inference from the silence of the published account, and it is likewise inclusive, since the *dossier* may have contained a record of a ratification. And the ratification may have developed nothing to which the Fiscal thought worth while to refer in his address. Whether there actually was a ratification, we do not know. What we do know is that the rules of procedure require all the testimony taken during the Sumario to be reduced to writing, read to the accused and his Defender in the Plenario, and open to scrutiny by them at any time during this stage of the trial.¹ If these provisions had been observed,

¹I make this statement on the authority of the Madrid correspondent of "La Correspondance de Rome"; see the issue for Dec. 31, 1909. The account of the trial and the procedure published in

and we have no reason to assume that they were not, Ferrer could have known whether a re-examination of any of the witnesses would be likely to result in a favorable change in their testimony. If no re-examination took place, the reasonable inference is that he did not ask for it because his previous encounter with some of the witnesses led him to conclude that it would not be of any benefit to him.

Undoubtedly the Defender was not allowed to cross-examine the witnesses (230, 1) for the sufficient reason that this practice is not included in Continental procedure, even in the civil courts. Cross-examination is peculiar to the English Common Law; it was not recognized in the Roman Law, which is the basis of court procedure on the Continent. In the latter countries the witnesses are still, as a rule, interrogated by the judge or judges, not by counsel. Consequently, it is scarcely reasonable to look for cross-examination in a military court in Spain.

It is apparently certain that no examination this journal differs from that given by Mr. Archer only in two or three details, which I shall mention presently.

of witnesses took place at the Vista Publica (230, 1). If it had, a record of it would in all probability be contained in the report of the Assessor to the judges at the secret session which followed. Mr. Archer intimates that this omission is a reflection upon the fairness of the judges; but a more reasonable inference would be that neither Ferrer nor his Defender demanded an examination of witnesses, just as they did not call for the re-examination authorized at the Plenario. However, it seems probable that the procedure does not admit any examination of this sort at the Vista Publica, notwithstanding Mr. Archer's translation indicating the contrary (230, 1). In the account of the procedure given by "La Correspondance de Rome" (Dec. 31, 1910) there is no reference to such a provision; and the procedure as a whole seems to imply that the taking of testimony, and the examination of witnesses are completed in the Sumario and the Plenario. It would seem that nothing is contemplated in the Vista Publica but an examination of the written evidence and other objects, the speeches of counsel, and the remarks of the accused. This is exactly what happens in

civil causes before the ordinary courts of France (Cf. Bodington, *op. cit.*, pp. 2, 3). In our military courts there is no stage resembling the Plenario, but at the trial proper all the evidence taken at the preliminary investigation is presented afresh, and witnesses are, of course, examined.

Finally, Mr. Archer declares that the examining commandant refused the request of Madame Villafranca and other friends of Ferrer to be heard in his behalf, on the ground that fresh witnesses could not properly testify at the Plenario, despite the fact that a witness for the prosecution was admitted at that stage (232, 2). Why did they not ask to be heard during the twenty-eight days before the Plenario in which their testimony would have been legally admissible? Or, if they suspected that the authorities were deliberately putting obstacles in the way of their summons, why did they not communicate their suspicions to the radical press? As the Auditor pointed out, they were not called during the first twenty-eight days for the simple reason that neither they nor Ferrer made any request to that effect ("Process," p. 59).

To sum up the discussion concerning the

nature and conduct of the trial: The military jurisdiction, under which Ferrer was tried, is ordinarily less desirable than that of a civil court, but it is sometimes employed even in our own country, and it is the prevailing jurisdiction in European countries in such cases as Ferrer's. Second, the rules of procedure compare favorably with our own military procedure in all material features. Third, all the evidence, positive and presumptive, contradicts the supposition that the judges and others in charge of the trial violated the rules of procedure, or deprived the accused of any legal safeguard.

We come now to the supreme question: Was Ferrer's condemnation warranted by the evidence brought against him? Before discussing the evidence, however, we shall find it useful to take note of

A FALSE ASSUMPTION AND A WRONG METHOD which vitiates Mr. Archer's estimate of the testimony. He assumes that Ferrer's condemnation was not justified, since the evidence did not show him to have been the "instigator and director of the rising," "the author and chief of the rebellion" (44,1). It

is true that Ferrer was formally accused as "*autor y jefe rebeliónis*," and that this phrase, taken by itself, would seem to imply that the prosecution set out to show that he was the one central organizer from whom all the other participants immediately or mediately received inspiration and direction. This charge was not proved, but it need not have been proved in order to condemn Ferrer to death legally and justly. In the first place, the words "*autor y jefe*," may in legal phraseology mean nothing more than our own term, "principal." Hence there could have been, as there were, many "authors and chiefs" of the Barcelona insurrection, each of whom would have merited death, according to the Spanish law, as also under the English and American laws. As a matter of fact, four other leaders of the revolt were executed, one of them before Ferrer. In the second place, the Fiscal's explanation of the phrase shows that he merely undertook to prove that Ferrer was *a* leader, not *the* leader. "That man," said he, "is the true author, inspirer, and chief of an insurrection who gathers men for it, arouses them, raises his voice, indicates the objects of the rebellion, and seeks and distributes the means

of carrying it out" ("La Correspondance de Rome," Oct. 29, 1909). In this description it is not asserted that the "author and chief" means the supreme head, nor that there can be only one "author and chief." Therefore, it is not clear that the formal charge accused Ferrer of being the central leader of the insurrection. Even if it had, the judges could legally have condemned him for the lesser crime of being *a* leader, or a principal. In our own civil courts the judge frequently instructs the jury that they may find a man on trial for *murder* guilty of *manslaughter*, if the evidence does not seem sufficient to prove the graver crime.

The erroneous method followed by Mr. Archer consists in estimating each piece of evidence and each charge separately, declaring that by itself it is worth little or nothing, and then concluding that the aggregate is likewise worth little or nothing. This may not inappropriately be called the method of artificial separatism. By it one could conclude that a group does not exist, because neither Jones, nor Brown, nor Smith, nor any other of the, say, ten, individuals composing it, is himself a group. All one has to do is to ig-

nore the definite relations of place and time which exist among the ten, and which create a moral entity in addition to their individual entities. As these relations may not properly be ignored, neither may the similar relations of place and time between the individual pieces of testimony, be properly treated as negligible. The latter relations and the moral unity growing out of them, require an explanation over and above the explanation of the several pieces of evidence taken individually. Nor can they be explained away by the simple device of ignoring them, any more than a group can be explained away by the process described above. According to this method of artificial separatism, all circumstantial evidence would be practically valueless; yet men have been hanged upon circumstantial evidence.

The foregoing criticisms, which are suggested by logic, common sense, and the general rules of evidence, are greatly strengthened by the particular rules of evidence and the particular penalties connected with the Common Law principles of criminal conspiracy. As an Englishman, Mr. Archer ought, it would seem, to have immediately recalled and kept

constantly before his mind the analogy between the offense of criminal conspiracy and the charge against Ferrer. Had the latter been tried in England or the United States, conspiracy would almost certainly have been the accusation. Since Mr. Archer apparently did not study or estimate the evidence in the light of the Spanish rules and penalties appropriate to such cases, he could not have done better than to apply the standards provided by the Common Law in the matter of conspiracy. The standards set up by mere common sense, or native conceptions of reasonableness, are not alone sufficient in such technical fields as that of judicial processes and rules of evidence.

Now the more important principles of the conspiracy law which are applicable to Ferrer's case are these: (1) To prove a man guilty of conspiracy it is not necessary to show that he took part in the actual arrangements or agreements which constitute the criminal contract or combination. It is sufficient to prove that he was one of several who pursued the common design or object of the conspiracy, one man performing one part, and another per-

forming another part of the means to the common end. (2) The proof of connection with a conspiracy may be by necessary inference, by overt acts, including counsel, encouragement, incitation, or commands, and by any circumstance which tends clearly to connect the accused with a conspiracy. (3) In a conspiracy every accessory becomes a principal, and is responsible for all the acts done by his fellow conspirators, provided that these acts are the natural consequence of the wrongful design which formed the central object of the conspiracy. (Cf. Bryan, "The English Law of Conspiracy"; "Cyclopedia of Law and Procedure"; and "American and English Encyclopedia of Law"; articles, "Crime," "Evidence," "Conspiracy," etc.; also *Spies vs. People*, 122 Ill.) If Ferrer had been judged by a New York court, these are the principles that would have been applied to his case, and the charge against him could have been either murder or treason. The Spanish military court and rules of procedure a "machine," forsooth! They are clumsy and futile as compared with the principles of constructive conspiracy. Since I am not ac-

quainted with the pertinent Spanish law on the subject, I am going to study the charge and the evidence against Ferrer in the light of criminal conspiracy under the Common Law of England and the United States.

In our examination of Mr. Archer's discussion of the evidence, it will be convenient to adopt in quotation marks his own headings.

“ UNSUPPORTED OPINION AND HEARSAY ”
(233, 1).

“ Thus we have ten witnesses, one of whom, Iglesias, said nothing about Ferrer, two ‘pointed to’ him, three ‘believed’ that he was at the bottom of the revolt, two ‘formed an opinion’ to the same effect, one related a report ‘which he had no means of verifying,’ and one repeated what some one else told him that he had heard some one else say.

“ . . . A group of five witnesses cited by the Fiscal in the same paragraph deserves somewhat different treatment. They are villagers of Premia—Don Juan This and Don Jaime That. Three of them declare generally that ‘after’ the visit of Ferrer to Premia on Wednesday, the 28th, events in that locality ‘assumed a grave character’; a fourth asserts that the change took place ‘immediately on his arrival,’ while the fifth fixes it at ‘an hour after his departure.’ ”

Mr. Archer declares the testimony of the "ten witnesses" to be practically valueless (234, 1) inasmuch as it contained merely their opinions, and statements that they had got from others. While this estimate is undoubtedly correct as regards the Fiscal's presentation of their testimony, we should like to know whether the *dossier*, which was before the judges, did not contain some reasons and facts upon which the witnesses based their opinions. We cannot be absolutely certain that the Fiscal would have thought it necessary to refer to these reasons and facts in his address. Again we wish that Mr. Archer had succeeded in getting a view of the *dossier*. In the form presented by the Fiscal, this testimony is worth little, and would not be admitted in an American or an English court. However, a different rule seems to prevail in several of the Continental countries. In France, for example, both hearsay and opinion are admitted by the judges, who use their own discretion in separating the wheat from the chaff, when they come to examine and evaluate the documentary evidence (Cf. Bodington, *op. cit.*, pp. 2, 3). Consequently Ferrer was not made the victim of excep-

tional treatment if evidence was used at his trial which would not have been relevant in our own courts.

The testimony of the "five witnesses" (234, 1) that soon after Ferrer's arrival in Premia on July 28, "events assumed a grave character," is vague and general in this form, but we can be morally certain that it was given in more specific terms by the witnesses themselves. Since they saw the disturbances, they would naturally recount the *concrete* facts that came under their observation, although the Fiscal would be satisfied with a *general* description of their testimony in his speech to the judges. The latter had a copy of the evidence as it was taken, and did not need a detailed repetition of it by the Fiscal. Once more we wish that we too had a copy of the *dossier*. Even as we have it, this testimony tends to connect Ferrer with an increase in the rioting in Premia. When we combine it with the testimony of those other witnesses (to be considered presently) who declare that Ferrer tried to have a republic proclaimed in Premia, it has a quite definite supplementary and confirmatory value. Using his method of artificial separatism, Mr.

Archer ignores this connection, this relation between these two pieces of evidence. It is true that he rejects the testimony of the "five witnesses" entirely (234, 1) on the ground that Ferrer "clearly held no communication" with anyone in Premia except Llarch and the other four whom we shall soon consider. But this is not entirely clear. Ferrer may have given directions to others whom the government was unable to obtain as witnesses. Moreover, some of those very men who were in Ferrer's company, and did testify, may themselves have been the agents through whom the disturbances were increased after his departure. Obviously, they would not be likely to volunteer this circumstance in giving their testimony.

"A SHADOWY HOST OF 'AGENTS'" (234, 1).

Most of the testimony referred to under this head is either opinion or hearsay. Whatever form it may have taken in the *dossier*, it is of no use to us in the Fiscal's analysis. While the evidence of Esteban Puigdemon is direct, it merely recounts the assertion of an insurrectionary speaker, that he was commissioned by Ferrer (234, 2). This

assertion may have been a lie. Nevertheless, Esteban's testimony would in any of our courts have been given to a jury with instructions to attach whatever value to it they would think proper. And the average jury would probably conclude that it had some significance as tending to confirm the statements of more important witnesses, especially those whom Ferrer tried to incite to revolution in Masnou and Premià. It is perhaps worth while to note that the widespread belief in Ferrer's activity in the rebellion, is more naturally explained on the assumption that it represented a fact than on Mr. Archer's theory that, "the ignorant peasants of the district had been indoctrinated with wild ideas as to the maleficent power of their heretic neighbor at Mas Germinal" (235, 1). The presumption against Ferrer which is created by the common opinion of the villagers, can be overcome only by *proving* that the opinion arose in the way suggested by Mr. Archer.

"STATEMENTS THAT PROVE NOTHING"
(235, 1).

"We have now to return to Barcelona, and to Ferrer's doings on the 26th — the day of the strike.

We have already noted that, in his own account of that day, he omitted a good deal, probably in fear of compromising his friends. Let us now see whether there was anything criminal—anything displaying him in the character of ‘author and chief of the revolt’—in the incidents that he omitted.

“There is no attempt to show the ‘author and chief’ in any way concerned with the events of the day until three o’clock in the afternoon. At that hour—between his luncheon and his appointment with the engraver—he went to the Casa del Pueblo, a workman’s restaurant and recreation-place, in search of his secretary, Litrán. In the café he saw an old Republican, Lorenzo Ardid, whose evidence is thus reported by the Fiscal:

“‘Ferrer entered and saluted him, saying that he would like to speak to him privately. Ardid replied, “When you please”; and Ferrer then asked him, “What do you think of the events of the day?” The witness answered, “It is all over: it is only a sort of protest, which cannot go any further.” Then Ferrer repeated, “You think it cannot go any further?”—upon which he answered with energy, and Ferrer became silent. Ardid then turned his back to him and said to one of the company, “Tell that gentleman that he had better go away quickly by the side door”—which Ferrer at once did.’”

Ferrer’s question to Ardid (which he later falsely denied) may be explained as merely “a passing remark on the situation” (235, 1); more probably it implied the belief or the wish

that the strike "would go further." The latter explanation becomes considerably stronger when Ferrer's question is connected with the testimony of the soldiers, Calvo and Sanchez, and the detective, Bemejo, namely, that Ferrer was continuously mingling with seditious groups during the afternoon. If he were not too keenly interested in the disturbances, and too anxious to see them converted into a genuine rebellion, he would have kept aloof from the crowds, except in so far as he had to pass through them in order to go on about his business. Again the suggestion comes to one's mind that the *dossier* would show a more specific statement of the officers' testimony than does the address of the Fiscal. In any case, one has to use the method of artificial separatism in order to conclude that the testimony considered in this paragraph, "proves nothing." When we link it with the statements of the barber Domenech, it becomes distinctively competent and significant.

"THE BARBER OF MASNOU" (236, 1).

"Now appears on the scene a curious and rather important figure. As Ferrer was sitting, about half

past nine o'clock, in the café under the Hotel Internacional, where he had dined, he saw passing a youth named Francisco Domenech, assistant in a barber's shop at Masnou, and secretary of the Republican Committee of that village. Ferrer called him in, and, learning that he proposed to walk home that night, suggested that they might go together. From the café, says Domenech, they went to the office of the Lerrouxist (Republican) paper *El Progreso*, to learn 'what the comrades were going to do'—an odd inquiry for the 'author and chief' to make. Thence they went to a café where Ferrer met some of his friends and nothing particular happened; and presently they returned to the office of *El Progreso*. Ferrer went in alone, and on coming out he remarked, according to Domenech, that neither Iglesias nor others had been willing to sign a document which he had brought with him, an address to the Government demanding the cessation of embarkations for Melilla, and threatening, in case of refusal, to make a revolution, the signatories placing themselves at the head of the people. Iglesias had said that the strikers had better return to work, and had asked what forces he counted upon for the course proposed."

In Mr. Archer's opinion, Ferrer's visit to the office of *El Progreso*, to learn what "the comrades were going to do," was an odd inquiry for the "author and chief" to make (236, 1). Now, it is true that, beyond some

vague statements by the "ten witnesses," we have no evidence to show that Ferrer had done anything to promote an insurrection before his arrival in Barcelona on the morning of the 26th. As Mr. Archer observes, the chief instigator who appears previous to the strike, was Emiliano Iglesias (54, 2). Some of the Chicago anarchists in the Haymarket case were hanged for writing just such incendiary articles as Iglesias wrote. They were adjudged principals in a criminal conspiracy which resulted in murder (see the article by the trial judge, Judge Gary, in the "Century Magazine," April, 1893). For many reasons it seems clear that Ferrer had not contemplated the possibility of a revolution until he had come to realize the character and magnitude of the strike. Then he began to inquire whether the strike might not be converted into an insurrection. His visit to the office of *El Progreso* for the purpose that he avowed, is of a piece with his previous actions on that day, as described in the last paragraph. That he would welcome a revolution which held any prospect of success is morally certain in view of his previous history, his ideas, and his character, to say nothing of his statement to

Moreno, that "if it was a serious movement that was going to lead to anything, it had all his sympathy; but if it was to be a mere flash in the pan, he regretted it" (56, 2). Who can doubt that he was one of those who "hoped" that the "pacific protest" would "not end there" (52, 2)? Mr. Archer admits that "his irrepressible sympathy with every form of revolt might have led him into one or two indiscretions" (241, 1). Yes; and there is no reason why it should not have led him into offenses much graver. On this hypothesis, it was very natural that he should go to the headquarters of the Republican section of the revolutionary groups, to see whether this faction would not coöperate with the others in making a revolution. This explains his effort to have the Republicans sign the threatening address to the government. How otherwise can we account for his two visits to the headquarters of a group with whom he had not been on good terms, and his later suggestion to Moreno? He informed the latter that the representatives of his own section, the Solidaridad Obrera, were trying to arrive at an agreement with the Republicans, and "suggested that Moreno should go and see what was hap-

pening" (236, 2). And Moreno replied that the Republicans "were already compromised," and intimated that if they should prove false they would be treated as traitors are treated in Russia (*ibidem*). Ferrer, then, was anxious that an agreement should be made to do something which was compromising in the highest degree, and had already contributed his part toward effecting that agreement.

Mr. Archer declares that Domenech swore falsely when he testified concerning Ferrer's connection with the threatening document (236, 2). This appears to be a gratuitous assertion on Mr. Archer's part. At the most, it is based upon the authority of Iglesias and other radicals who were compromised by the circulation of the address. Domenech's testimony is clearly superior to theirs on this point. Assuming its truth, we see Ferrer taking an active part in the very formation of a conspiracy, though not perhaps the precise conspiracy which was finally effected. Nevertheless, the fact that he participated in an abortive attempt at a sort of "conditional conspiracy," would, under our Common Law, be construed as connecting him with the actual conspiracy, owing to the close relations of

place, object, time, and persons existing between the two. Even if it be assumed that he had no part in the circulation of the threatening address, his two visits to the office of *El Progreso*, together with his suggestion to Moreno, and the reply of the latter, would have connected him by inference with the actual conspiracy, and would have rendered him liable for all the acts of his fellow conspirators, some of which caused murder, and all of which were part of a conspiracy to overturn the government,—a treasonable conspiracy. This would have been the construction put upon Ferrer's activity on the evening of the 26th according to the Common Law. How inadequate and misleading, then, is Mr. Archer's description of that criminal activity as, mere willingness to send a threatening address to the government (236, 2). Ferrer could not, indeed, have been condemned for his conduct on that evening alone, for it was related by only one witness, whereas two witnesses are required in cases of treason, both in England and the United States. In England, however, the two witnesses need not testify to the same act. We come now to another witness who connects Ferrer with an-

other act in the treasonable and murderous conspiracy.

“RELEVANT ACCUSATIONS: THE CATHOLIC JOURNALIST” (236, 2).

“Don Francisco de Paula Coldefons, a journalist on the staff of various clerical papers, asserted in one of them, *El Siglo Futuro*, as early as August 8, that he saw Ferrer ‘at the head of a group (*capitaneando un grupo*) in front of the Liceo Theater on the Rambla.’ When he appeared before the examining commandant, however, his statement became considerably less positive. This is how the Fiscal reports it:

“‘The said gentleman affirms that on Tuesday, the 27th, between seven-thirty and eight-thirty in the evening, he saw a group, in the Rambla, in front of the Liceo, *captained* (mark that well) *captained* by a person who seemed to him to be Francisco Ferrer Guardia, whom he knew only from a photograph; but he acquired the conviction that it must be he from hearing the passers-by say so. The group passed down the Calle del Hospital. Furthermore, . . . the witness identified Ferrer three times in a circle of prisoners as the man he had seen in that situation.’”

Coldefons could not have sufficiently recognized Ferrer from a photograph; he did not tell just how the prisoner was “captaining” a group of rioters; and he must have been

mistaken because Ferrer was most probably not in Barcelona on the 27th (237, 2). Thus, Mr. Archer. But the witness did not rely entirely on the photograph, since his impression was confirmed by the statements of the bystanders. Had he felt any doubt concerning his own impression, he would in all probability have inquired of his fellow spectators, and got precisely the information that they seem to have furnished without being asked. "Captaining" means leading or commanding, but undoubtedly the witness gave his testimony in more specific form, describing the concrete facts that he saw, and not merely embracing them in a generalization. Witnesses see facts in the concrete, and usually narrate them in the same fashion. Knowing that the judges could see and weigh the specific testimony for themselves in the *dossier*, the Fiscal referred to it by the general term, "captaining." Oh, for an hour with that *dossier*! It would be worth a trip to Spain. As to the third objection, Ferrer was sufficiently interested in the probability of a revolution to have come to Barcelona on the 27th, and he probably would have traveled very quietly, in order to escape observation by

the agents of the government; for, whatever may be said of his moral courage, he seems never to have recklessly thrust himself into unnecessary physical danger. Colldefons' testimony is sufficiently definite and direct, therefore, and it is likewise unimpeachable; for if he had intended to lie he would not have admitted that his recognition of Ferrer depended upon a photograph, and upon the assurance of others. In this testimony Ferrer is not, indeed, exhibited as the chief or director of the whole revolt (237, 2) but he appears as a principal in a capital conspiracy during the execution of the same. According to the principles of the Common Law, he is therefore liable to capital punishment. While only one witness testifies to this act, another witness, Domenech, testifies to another act in the same conspiracy, and this would be sufficient to condemn him in England if he were on trial for treason. Had he got off with a lighter punishment, he would have to thank the jury who might find that the testimony was not sufficiently clear; for assuredly the law would regard the acts themselves as meriting death.

“ THE VILLAGE REPUBLICANS ” (237, 2).

“ On Wednesday, the 28th, Ferrer, as was his custom of a Wednesday morning, presented himself at the barber shop at Masnou, where Domenech was employed. According to Domenech, he sent for one Juan Puig Ventura, nicknamed Llarch, or ‘tall,’ the President of the Republican Committee. On Llarch’s arrival, Ferrer proposed to him that he should go to the *ayuntamiento*, or town hall, and there proclaim the Republic. So far, Domenech; but Llarch himself goes further and says that Ferrer urged him ‘to begin by inciting people to sally forth and burn churches and convents.’ Llarch replied that he did not see how that would advance the Republican cause; to which Ferrer answered that he cared nothing about the Republic, but was simply bent on revolution. He then proposed that Llarch should accompany him to Premia, which that gentleman, though shocked at his suggestions, agreed to do. At Premia they met the *Alcalde*, or Mayor, to whom Ferrer made similar proposals. Then, on their way back to Masnou, they met a group of young men coming from Barcelona, who told them what was going on, whereupon Ferrer said, ‘Good! Good! Courage! It must all be destroyed!’

“ The *Alcalde* himself, Don Domingo Casas, and the acting secretary of the *ayuntamiento* Alvarez, are quoted as emphatically confirming the statement that Ferrer proposed the proclamation of the Republic, and the Deputy *Alcalde*, Mustarés, seems to

have told the same story. Finally, Francisco Calvet, waiter at the *Fraternidad Republicana* of Premia, relates that at half past twelve on the day in question Llarch appeared at the café with another person whom he (Calvet) did not know :

“ ‘ Presently arrived Casas, Mustarés, and Alvarez; and then the unknown said: ‘ I am Ferrer Guardia.’ The witness adds that this produced a startling effect on those present, and especially on himself, on account of all the evil he had heard of that person; and that then Ferrer added, addressing the Alcalde, ‘ I have come to say to you that you must proclaim the Republic in Premia.’ The Alcalde replied, ‘ Señor Ferrer, I do not accept these words ’; upon which the accused answered, ‘ How should you not accept them, since the Republic is proclaimed in Madrid, Barcelona, Valencia, and other capitals? ’ ”

Mr. Archer admits that if the charges of these six witnesses are true, Ferrer was guilty of “ an indiscretion ” (237, 2) which rendered him “ liable to whatever punishment the law assigns to an utterly abortive attempt to stir up a local sedition ” (239, 2). In passing, I wish to note that, according to the translation of the “ Process ” appearing in “ *La Correspondance de Rome* ” (Oct. 30, 1909) ten witnesses instead of six testified to these accusations, while nine others gave sup-

plementary testimony concerning one of the charges. However this may be, the words just quoted from Mr. Archer exhibit his method of artificial separatism, and his strange ignoring of the principles of conspiracy, at their worst. No doubt the Spanish Military Code does not make an unsuccessful attempt at a local sedition "a capital offense" (239, 2) but the Common Law of conspiracy in England and the United States would not have regarded the incitations to set up a republic and to burn convents as offenses standing by themselves. It would have related them, as Ferrer himself did, (238, 1) to the insurrection in Barcelona, and would have judged them as a part of the general conspiracy in action there. Even if we assume that these attempts of Ferrer were "utterly abortive," that they contributed nothing to the disturbances which, according to the "five witnesses," followed his presence in Premia, — the Common Law would have construed these unsuccessful acts as parts of the conspiracy, and would have held the actor responsible for all the acts of his fellow conspirators (Cf. "Cyclopedia of Law and Proce-

ture," vol. 8, pp. 642, 643). As usual, I must assume that the Spanish law would not be less severe.

“SIX JUST MEN” (238, 2).

The fact that one of these witnesses, Domenech, was “got out of the country with all despatch” (238, 2) proves nothing except that, as secretary of the Republican Committee at Masnou (236, 1) he might reasonably have feared that, owing to his testifying for the government, his associates might be tempted to “do with him as they do with traitors in Russia.” Apparently the prosecution had no reason to assume that he would have changed his testimony had he remained. Moreover, he was not arrested for complicity in the rioting; hence his evidence is not weakened on that score. All in all, it would seem that his testimony, as to Ferrer’s activities both in Barcelona and in Masnou, is of the most reliable character, and may well be called valuable. The evidence of the three who had been arrested, and who were released without trial, is undoubtedly less trustworthy; yet evidence of this kind is constantly admitted in all courts, and is recognized as having value, es-

pecially when it is corroborated by other testimony. In this case it is supported by the evidence of Calvet and Mustarés, and is indirectly borne out by the statement of Domenech. The sum total of this part of the evidence, then, is that we have five witnesses testifying to the treasonable act at Premia, and one witness describing a similar act at Masnou, or four more than the English law requires to establish a similar charge. It is not improbable that an English or an American jury would have hanged Ferrer on this testimony alone.

“ DOCUMENTARY EVIDENCE ” (239, 2).

Since the authorship of the second of the two papers discussed under this head has been called into question, I shall disregard it entirely. The first would probably not have been admitted in our courts if the defense could show that the writer's opinions had changed in the interval between the writing of it and the insurrection. It would have been accepted in a French court, and probably in any other Continental court, where there is no jury, and the judges pass upon both the law and the evidence. For a judge

is as capable of sifting out irrelevant testimony in that situation as when he is called upon to exclude it from the consideration of a jury. The average judge is able to protect himself against improper testimony; the average jury is not; hence the different usages regarding this matter in the different courts. Mr. Archer asserts that all three of the government officers dwell upon these documents "as conclusive proofs of Ferrer's guilt" (240, 1). Nevertheless, he cites no proof that either the court officers or the judges attributed to these papers more evidential value than they actually possessed. The first document shows that Ferrer believed in the most violent and destructive form of anarchy in 1892. Although he might have "utterly abandoned" the policy of violence long before the Barcelona affair, no one can doubt that the change was due to motives of expediency, not to moral scruples. Hence the document was of some value as tending to show that if a violent revolution became expedient it would be gladly welcomed by the writer. But we cannot say that the paper has any great importance, nor that it had much

weight with the judges. We know nothing about the latter point.

To sum up the evidence very briefly: (1) That given by the "five witnesses," by Esteban Puigdemon, by Ardid, by the two soldiers, and by the detective, has a very considerable supplementary and corroborative value in conjunction with the more important testimony concerning Ferrer's activity on the evening of the 26th and the morning of the 28th. (2) Any one of the three actions witnessed, respectively, by Domenech, Colldefons, and the "six just men," would, if established by sufficient evidence, convict Ferrer of participation in a treasonable conspiracy, or in a conspiracy leading to murder. In England and in some of our own states, the offense would come under the former head, as well as under the latter. In all of our states it would be conspiracy leading to murder. And the penalty under either charge would be the heaviest known to the law. (3) As to the sufficiency of the evidence in Ferrer's case, it would not establish guilt in any single one of the three actions except the last; but when the testimony to all three is combined; when it is

connected with the less important evidence recounted above; and when it is considered in the light of the entire absence of testimony for the defense,—there is scarcely room for doubt that nine of ten English or American juries would have sentenced him to death under the Common Law of conspiracy.¹

INFERENCES VERSUS FACTS AND PROOFS.

Mr. Archer rejects “the theory of any criminal conspiracy against Ferrer”; doubts “whether anyone concerned in the affair acted in deliberate and conscious bad faith”; declares that all the alleged injustice committed against the accused can be explained by “malignant stupidity, coupled with the absence of the most rudimentary sense of fair

¹ Let us recall the principle of the Common Law, that connection with a conspiracy need not be directly proved, but may be concluded inferentially from acts tending to the common end of the conspiracy. As to the acts that are regarded as sufficient under this head in a charge of treason, the following words of Chief Justice Marshall are clear and decisive: “If a body of men be actually assembled for the purpose of effecting by force a treasonable purpose, all those who perform any part, however minute, or however remote from the source of action, and who are actually leagued in the general conspiracy, are to be considered as traitors,” *Ex p. Bollman, 4 Cranch* (U. S.), 126.

play"; asserts that "militarism inspired by clericalism rode rough shod over the plainest principles and practices of justice"; assures us that "the determination to convict with or without evidence was even more manifest than in the Dreyfus case"; and informs us that Ferrer was adjudged guilty because he was thought to be, "through his opinions and teachings, the *moral* 'author and chief' of the revolution" (240, 241, 242). Without attempting to understand how men can be in good faith, and yet "ride rough shod over the plainest principles of justice," and have the "determination to convict with or without evidence," I content myself with the statement that for not one of these charges does Mr. Archer offer a single piece of definite and conclusive evidence. They are all inferences drawn from wrong premises. He knows that the military and clerical parties in Spain, or many of their members, believed that Ferrer was to a large extent morally responsible for the outbreak; he thinks that Ferrer was unfairly treated at the trial because he has placed too much reliance upon his own abstract standards of fairness, and incorrectly interpreted the silence of the pub-

lished account on certain points; and he believes that the evidence was insufficient to convict because he wrongly assumes that Ferrer should have been proved guilty of being the central director of the revolt, because he uses an impossible and entirely new method of estimating the value of evidence, and, most of all, because he seems oblivious of the Common Law principles of conspiracy. From this one fact and these many incorrect opinions, assumptions, and methods, he deduces the incorrect inferences quoted above. Only on these grounds, in his view, can the facts of the trial and conviction be explained. But if the estimates and conclusions developed in this pamphlet are sound, Mr. Archer's inferences become superfluous. Ferrer had a fair trial, and was condemned on sufficient evidence.

CHAPTER IV

FERRER AS AN EXPONENT OF THEORIES

In the second last paragraph of his second article, Mr. Archer informs us that Ferrer was, "not the least of the victims of obscurantism, the martyrs of progress." Apparently he bases this resounding sentence upon his earlier assertion on the same page, that Ferrer was in reality condemned for his opinions and his teaching. The sentence itself calls up the well known advice of Samuel Johnson, "endeavor to clear your mind of cant." To-day, more than ever, cant is what Carlyle called it, "a double distilled lie; the second power of a lie." And of all the canting catch words of to-day, "progress" is probably the most superficial and the most deadly. Mr. Chesterton is not less clever than usual when he describes the cry of the modern man for progress as equivalent to: "let us not settle what is good; but let us

settle whether we are getting more of it." Among other things progress denotes movement; but it is too often taken to mean movement away from what we have to an indefinite something that we have never taken the trouble to conceive clearly, much less to define precisely. The important thing is movement; the end does not matter.

Let us, then, endeavor to clear our minds of cant, and to see whether there is any justification for the sentence that we are criticizing. If Mr. Archer was not merely indulging in rhetorical fireworks when he wrote it, he meant either or both of two things: that Ferrer's teaching was in accordance with progress; or that, in any case, to punish him on account of his teaching was to violate the right of free speech, and hence to oppose progress. We shall begin with the first supposition, and inquire whether Ferrer was an exponent of progress, either as an educator, a champion of political liberty, or a social reformer.

AS EDUCATOR.

What I may call the "Ferrer tradition" represents him as mainly if not merely a

schoolmaster, a provider of schools for a people fifty per cent. of whom, Mr. Archer says, are illiterate. Had Mr. Archer consulted a recent authority, for example, "La Estadística Escolar de España," the official report on this subject for 1908, he would have found that the percentage of illiteracy is now only thirty. That is, indeed, exceptionally high among enlightened nations; moreover, the schools in Spain are badly equipped, the teachers poorly paid, and the instruction considerably below a desirable degree of efficiency. A partial explanation of these conditions is to be found in the fact that so large a proportion of the Spanish population is in country districts, and comparatively indifferent to education. If any part of the responsibility rests with the directing classes, who may have acted upon the theory that the masses of the people are better off in a state of "innocent ignorance," the former are now apparently reaping the whirlwind. It is neither wise nor just to neglect giving all the people a certain minimum of elementary education, at least. How much more than this should be provided will depend upon individual and national resources. If it is a good thing to be a man rather than

a brute, to have a mind rather than to have no mind, then, it is a better thing to have a better mind, that is, a trained mind. And the better a mind is trained, the more nearly does it become the image and likeness of its Creator, and the more capable does it become of doing the Creator's will in the world. Ignorant contentment with remediable injustice may be a satisfactory condition temporarily and exceptionally, but it is always a dangerous condition, and it tends to promote the reign of unnecessary injustice. More wise and more just is the policy which would fit the minds of the people to recognize unjust conditions, and to distinguish between the true and the false in doctrines of reform.

But there is a true and a false education, and the latter may be worse than no education at all. With the truth that it imparts it may combine so much untruth as to leave the last state of the man, or the child, worse than the first. Now this is precisely the kind of instruction that Ferrer intended to give and did give in his schools. According to Mr. Archer himself: "There are very few countries in which teaching so openly hostile to the existing form of government and to the

whole social order would be endured. One can scarcely imagine what would happen if such a school were established and found numerous imitators, in America or England; but assuredly the principle of toleration would be stretched to its limit" (48, 1). If the most enlightened and tolerant nations would have taken this view of Ferrer's teaching, we are justified in concluding that it was of that bad kind which is worse than none. Moreover, these general statements of Archer do not exhibit with sufficient definiteness the utter virulence and depravity of the sentiments which Ferrer diffused in his schools and text books. Here are a few specimens. The first is from his *Compendio de Historia Universal*: "This sweet Saviour is devoid of filial sentiment, and lets pass no opportunity to repulse His mother" (p. 43). The following appears in his Third Reader, entitled, *Patriotismo y Colonizacion*: "Don't get excited about the flag, which is only three yards of cotton stuck on the end of a pole" (p. 15). "Property has been established by spoliation, cunning, trickery, by rapacity and deception under the name of commerce and industry" (p. 24). "The words, country, flag, family, arouse in

me no more than hypothetical echoes of wind and sound" (p. 80). Here is a simple but comprehensive statement of his views about political authority; it is taken from his *Historia de España* (p. 121): "Government, usurpation, tyranny,—a question of words; not only all government, more or less legitimate, but all power is tyranny." No wonder Mr. Percival Gibbon refused to believe that teaching of this sort was "any more possible in Barcelona than in Philadelphia" (McClure's, Oct., 1910; 703, 2). I have borrowed these extracts and references from Villaescusa's *La Revolucion de Julio en Barcelona* (1909). I have no reason to doubt their genuineness.

Clearly, it were better for the children who frequented Ferrer's schools that they had never seen him or his text books, even though they might have remained ignorant of some natural science which he taught them in a perverted perspective, and with false interpretations and conclusions. Not as an educator was Ferrer "a martyr of progress."

AS CHAMPION OF LIBERTY.

Spain, is not, indeed, a republic; neither is it an absolute monarchy. Its governmental system compares very favorably with that of any other constitutional monarchy in Europe. In the matter of individual security against arbitrary treatment by the sovereign or his official representatives, the Spanish subject has for centuries been effectively protected by fundamental and organic law. The *Privelegio General* of Aragon was granted only 68 years after the signing of the Magna Charta, and its provisions for the protection of the individual, especially in his rights to life, liberty, and property, are second only to those of the famous English document. The *Manifestacion*, which is more than 700 years old is as effective as the writ of habeas corpus for preventing arbitrary imprisonment. Concerning the legal system of medieval Spain, Mr. S. P. Scott, a high American authority writes: "In its thoroughness of organization; in its adaptability for the requirements of those for whose benefit it was designed; and in its impartial and speedy administration of justice, it was at least four centuries

in advance of the judicature of England." ("Annual Bulletin, Comparative Law Bureau of the American Bar Association," July 1st, 1909, p. 19.) He sums up his study of Spanish jurisprudence in the following words: "The Constitution and Code of Spain are founded upon exact principles of justice, and admirably adapted to all the purposes of legislation, judicature, the protection of civil rights, and the repression of arbitrary power" (p. 25). Indeed, the everyday life of the individual is less affected by the national government in Spain than in most of the countries of Europe, with the natural result that the majority of the people take very little interest in national affairs.

Yet the average American thinks of Spain as the typical land of centralization, arbitrary power, and opposition to the principles of democracy, though he would probably concede that she is no worse in these respects than Russia. The victims of this impression ought to read history. If they did they would find that, in the early 17th century, when the doctrine of the divine right of kings had become fashionable in more than one country of Europe (it was not known in the Catholic

Middle Ages) a Spanish theologian, Francisco Suarez, defended in terms that would satisfy any moderate believer in democracy the theory that civil power has its *immediate* origin in popular consent and commission, and not in a supernatural delegation from God. Replying to James I of England, one of the authentic inventors of the "divine right of kings," Suarez declared: "No monarch holds authority immediately from God, but only through the medium of the human will. This is, indeed, 'a celebrated theological axiom,' not, as the king says, 'ridiculous,' but true" ("Defensio Fidei Catholicæ," III, ii, 10). Commenting on a similar passage in another part of the works of Suarez, the English historian Hallam observes, "So clear, brief, and dispassionate a statement might have caused our English divines, who became very fond of the patriarchal theory [that the king held his authority directly from God] to blush before the Jesuit of Granada" ("History of Literature," II, 133).

Nevertheless it may be objected that certain hereditary and privileged classes exercise too much power in the upper house of the Spanish legislature; that it would be better for Spain

and the majority of the Spanish people if the influence of these classes were diminished, and some representation in the Senate accorded to the working classes. The principle of representation by classes in one of the two houses of the national legislature is fundamentally sound, inasmuch as it enables the members of each class to safeguard their own interests by sending to the legislature men who represent and understand these interests specifically; but any scheme based upon this principle ought to provide for the representation of all the important classes, especially the poorest and most numerous. This is reasonable on essentially the same grounds that some degree of democracy, of the representative principle in government, is reasonable. Just as every form of political absolutism, even a benevolent despotism, is undesirable, so the government of any important social class by the unlimited will of another social class, is undesirable. And this remains true even when the governed class is composed of ignorant workingmen, and the governing class is composed of educated men and of wealthy men. I do not now consider the degree of representation that should be accorded to the poorest

class, but merely the principle. The grounds upon which the principle (of class representation, and of democracy in general) rests are chiefly these: First, no man can realize his full possibilities of life and self development if he permits another man, even a superior, to do for him those things which he can as advantageously do for himself. What is true of the individual in this matter, is likewise true of the social class, or group. Second, there are some things relating to the welfare of every social class which no other class can understand as well, or provide for as effectively, as the class itself which is directly interested. Finally, the superior intelligence of the upper classes does not always include that special kind of intelligence that is required for wise and just government; nor have these classes shown themselves throughout history to be less selfish than other classes, less free from class bias, or less liable to interpret the general welfare in terms of their own welfare. In so far as the legislative system of Spain ignores the foregoing facts and principles, it is capable of improvement.

But whatever defects exist in the Spanish Constitution can all be removed by orderly

and constitutional methods. This is quite as true of Spain as it is of England, where a far-reaching change of this kind is now in progress. No other country of Europe furnishes less provocation than Spain for the activities of anarchists, whether of the peaceable or the violent stripe. Now Ferrer's sole aim as a teacher and publicist was to make revolutionists and anarchists. While he did not, in his later years, advocate the use of force, there can be no doubt that he would have approved it if he thought it opportune. Nor can anyone doubt that his teaching was calculated to foster precisely the same attitude in others. Unless, therefore, Mr. Archer believes in the theories of anarchism, to be realized if necessary by the bomb and the torch, he does but stultify himself when he implies or suggests that Ferrer's political teaching and activity were in the direction of progress.

AS SOCIAL REFORMER.

Was Ferrer "a martyr of progress" on account of his teaching on industrial and social reform? The American Federation of Labor seems to have thought so, when its annual convention of 1909 passed resolutions of

sympathy with him. Like most other persons who depended upon the secular press, its members were misled by the first accounts of the man and his trial. A few weeks later, John Mitchell admitted that the convention had acted under a misapprehension of the facts. While Ferrer sympathized with the working classes, his program of industrial reconstruction was undoubtedly some form of anarchistic communism. He would have neither policemen nor private property. Now this scheme of voluntary, independent, and communistic associations of production and distribution, without either legal authority or legal restraints, does not strike sober-minded persons as practicable or desirable. It would either quickly go to pieces or reduce the majority to a condition of industrial slavery under a minority composed of the most powerful and the most cunning. This condition and this mastership would be worse than anything that we have in the present system. Moreover, there is abundant evidence to show that Ferrer would, if expedient, have had his new economic order introduced by wholesale confiscation. We cannot call this program nor this method progress.

AS MARTYR OF FREE SPEECH.

It is not improbable, however, that Mr. Archer would accept our condemnation of Ferrer's educational activity, and political and industrial teaching. In that case, we must conclude that he calls Ferrer "a victim of obscurantism, a martyr of progress," simply because in his opinion to punish a man for any, even the worst, sort of teaching, is contrary to free speech, and therefore contrary to progress. Now the theory that a man ought to be permitted by law to speak or write whatever he pleases is not only false, but never has been consistently adopted by any civilized nation. Why should lip freedom or pen freedom be less restricted than arm freedom or gun freedom? Why should a man be permitted to say what he pleases, and not to do what he pleases? The propagation of opinion is carried on only with a view to giving it external reality and permanence in deeds and institutions. If the latter, say, destruction of property, anarchy, and adultery, may properly be restrained and punished by law, may they not quite as properly and more effectively be repressed in their causes, the pestiferous teach-

ing?' We protect the ignorant, which means the great majority, against adulterated food: is it less important or less reasonable to protect the average man against that poisonous doctrine which generally results in pernicious actions and conditions?

Moreover, unlimited freedom of speech has never been permitted by any civilized state. In his "Letter to the Duke of Norfolk," Cardinal Newman so clearly pointed out the disastrous consequences of this so-called right as advocated by Mr. Gladstone, that the latter petulantly exclaimed: "What bishop knows of a State which by law allows a perfectly free course to blasphemy, filthiness, and sedition?" Even in America, a man may not with legal impunity libel his neighbor, nor propagate immoral literature, through the mails or through the book trade. We hanged the Chicago anarchists mainly because of their speeches and their writings, and, since the assassination of President McKinley, we do not permit anarchists, even of the "philosophical" brand, to come into the country. There are only two grounds upon which the freedom to spread false doctrine can plausibly be defended. The first is that we do not know, or cannot agree,

whether the doctrine is false or true. The second is that toleration is often more conducive to social welfare than prohibition. This is a practical problem which every nation must solve for itself; but there are certain doctrines which men in civilized societies are practically unanimous in condemning. Among them are Ferrer's teachings on the family, government, and property. Even if the Spanish military court had sentenced Ferrer to death because of his opinions and propaganda, it would not have been wrong in principle, nor punished him too severely, nor impeded genuine progress.

Education, political liberty, social reform, freedom of speech, are all causes so sacred and so vital that they must not be outraged and discredited through association with the pernicious and reprobated teachings of Ferrer. That men can so ignore or misinterpret the evidence as to conclude that he was unjustly condemned, is in itself a very small matter; that they should identify his doctrines or his cause with the interests of progress, is on every account deplorable.

Somewhat less deplorable, because purely

personal in its bearings, is Mr. Archer's attribution to Ferrer of "genuine moral greatness" (241, 2). He admits, indeed, that Ferrer was neither a great educator nor a great man, that both his thought and methods were crude (*ibidem*). The truth is that this "intellectually mediocre" (the phrase is Archer's) Spanish anarchist, about whom so much fuss has been made by misguided people, was not an educated man at all. He had only a rudimentary school training, but his extraordinary energy enabled him to take in a heterogeneous and ill-assorted mass of facts, theories, and hypotheses, and thus to impose upon the superficial and the uncritical. Nor can we concede to him moral greatness. Even if we admit, with Mr. Archer, that, "his idealism was ardent and sincere, his courage was high and unflinching" (*ibidem*) we deny that these are sufficient to make him morally great, just as we refuse the attribute of physical greatness to a man who has exceptionally keen sight and manual dexterity, but who is deaf and dumb, and has lost both legs. Moral greatness supposes that *all* the moral qualities are at least up to the average, and that some of

them are considerably above this level. Unless, therefore, we are to give the phrase a new definition, we cannot predicate moral greatness of a man whose life and teachings were profoundly if not equally immoral.

CHAPTER V

POSTSCRIPT

Throughout the foregoing pages I have consistently resisted the temptation to discuss Mr. Archer's motives or mental attitude. I have tried to treat his statements objectively; to discuss his assertions, inferences, and conclusions, rather than his viewpoint, his tendencies, or his prejudices. Since, however, the latter go a long way toward explaining his false conclusions, and other defects in the articles, they may profitably be noticed at this time. Without in any way attacking his honesty or sincerity, I maintain that Mr. Archer is profoundly biased against the religious congregations and the government of Spain, and in favor of the revolutionary forces with which Ferrer was identified. Owing to this bias, Mr. Archer did not, perhaps could not, give sufficient attention to the facts that support the former and condemn the latter. His

bias appears on almost every page of his articles. As typical instances may be cited the following: his assumption that the secrecy of convents is sufficient reason for the nastiest kind of suspicion; his inclusion of scapulars among "appropriate trifles"; his reference to the priests who "hovered" about Ferrer the night before the execution (this opprobrious term was struck out either by the editor or by the author after the first proof had appeared; it does not occur in the published copy); his description of the niece of Ferrer, a girl whom he had never seen, and who was no more to him than Hecuba to the strolling player in Hamlet, as, "poor little Layeta"; his repetition and acceptance of all the anti-clerical charges against the religious congregations, and his failure to give a single statement from the latter by way of refutation or explanation; his elaborate and uncalled-for efforts to show that the outrages committed by the mob were not as great as they have sometimes been represented; his apparently exclusive association and consultation with the friends of Ferrer and with the revolutionists, and his apparently deliberate neglect to see and question those of the other side who might

have given him pertinent information, or at least, suggested another interpretation of certain facts; his failure to examine the original records of the trial, or to note the difference between Continental and English legal procedure; his tone of advocate for the accused rather than dispassionate investigator, which is so obtrusive throughout his discussion of the trial; his constant use in this portion of his work of sarcasm, irony, and innuendo, instead of calm, objective statement; and, finally, his rhetorical denunciation of clericalism in the last paragraph of his second article, thus implicitly contradicting what he had said in the immediately preceding paragraphs. Nevertheless, I repeat that we are not justified in attributing to him dishonesty or insincerity; the bias and bigotry which arise out of ignorance, one-sided education, and limited association are sufficient to account for the defects that we are condemning in his articles. The single fact that he has translated into English the works of Ibsen may not be without significance with regard to his feeling and attitude toward the Church and other traditional institutions.

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